

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

September 25, 2007

The Rhode Island Ethics Commission held its 16th meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, September 25, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair James V. Murray
Barbara R. Binder, Vice Chair James C. Segovis
George E. Weavill, Jr., Secretary Ross Cheit
Richard E. Kirby**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch.

At approximately 9:09 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open

Session held on September 11, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve the minutes of the Open Session held on September 11, 2007.

ABSTENTION: James C. Segovis.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Harold Krasner, a member of the City of Cranston Building Appeals Board. Staff Attorney DeVault advised that this matter had been continued from the last meeting so that the petitioner could be present and respond to questions, and she summarized the Commission Staff recommendation. In response to Commissioner Weavill, the petitioner informed that the Board is comprised of a carpenter, electrician, engineer and contractor who try to resolve any conflicts regarding the Building Official's issuance or non-issuance of a permit. He clarified that an aggrieved person would not appeal to the Zoning Board.

In response to Commissioner Weavill, the petitioner stated that he would recuse if a developer whose work he had reviewed had an

appeal. He also stated that he would recuse on matters involving a developer with whom he had a disagreement. He explained that he viewed the position as temporary, part-time work. Commissioner Cheit noted that the petitioner first started working in 2006 and had represented that he would be doing so just while the backlog existed. The petitioner informed that there is a tremendous backlog in Cranston and he will continue to work as long as there is a need. He indicated that he limits himself to reviewing small plans and does not take on the big projects. He stated his belief that there is another gentleman doing similar part-time work.

In response to Commissioner Cheit, the petitioner advised that the backlog has not decreased since he was first hired. Commissioner Kirby inquired whether anyone has challenged the petitioner overseeing the Building Official's work, given that he had hired the petitioner. The petitioner replied that, to his knowledge, no one has. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit, it was

VOTED: To issue an advisory opinion to Harold Krasner, a member of the City of Cranston Building Appeals Board.

AYES: James C. Segovis and James V. Murray.

NOES: George E. Weavill, Jr., Richard E. Kirby, Ross Cheit, Barbara R. Binder and James Lynch, Sr.

No advisory opinion issued due to a lack of five affirmative votes. Staff Attorney Gramitt clarified that the safe harbor letter previously issued automatically expires upon the Commission's failure to approve the opinion. Chair Lynch and Commissioner Cheit both noted that the petitioner would be at risk of a possible violation of the Code if he continued in both capacities.

The next advisory opinion was that of James A. Seveney, a member of the Portsmouth Town Council. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present and stated his agreement with the facts presented. He advised that he has a fifty foot wide lot on which there is a house that was built in 1940. He stated that the lot is in violation of side yard setbacks and he cannot do anything without a variance. At Commissioner Weavill's request he clarified the location of the property, which is located on the Sakonnet River. He also advised that he had lived in the residence across the street, prior to his mother's purchase of the subject property in 2000 or 2001. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to James A. Seveney, a member of the Portsmouth Town Council.

The next advisory opinion was that of Benjamin M. Scungio, Esq.,

whose law firm serves as legal counsel to the North Providence School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. Andrew Henneous, Esq. was present on behalf of the petitioner and represented that he is handling the negotiations and does not discuss them with the petitioner. Commissioner Segovis inquired if the members needed to vote on the opinion if the petitioner is not subject to the Code. Staff Attorney DeVault advised that the Commission has previously issued opinions reaching the same conclusion and indicated that the petitioner would like the protection afforded by an opinion. In response to Commissioner Cheit, Attorney Henneous stated that the issue has been raised with the School Committee. Upon motion made by Commissioner Binder and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Benjamin M. Scungio, Esq., whose law firm serves as legal counsel to the North Providence School Committee.

The next advisory opinion was that of Joseph Burchfield, the North Providence Town Council President. The petitioner was present along with his attorney, James Burchfield, Jr. Staff Attorney DeVault presented the Commission Staff recommendation, which included Options A & B. Attorney Burchfield advised that, based upon a recent consultation with a realtor, the petitioner acknowledges that there may be a financial impact upon his property. He stated that the

petitioner's unit is 1,200 feet from the boundary line but he has an interest in common property located within the 200 feet for notice as an abutter. In response to Commissioner Kirby, the petitioner stated that there are a total of 100 individual units and he is not a board member for the association.

Commissioner Kirby noted that the association would have an interest in and responsibility for the development's upkeep and maintaining property values, with which the petitioner agreed. Commissioner Kirby expressed his concern that the petitioner would be exposing himself to problems by his participation. In response to Commissioner Weavill, the petitioner advised that all units are of similar construction. Commissioner Weavill commented that the petitioner is really connected with the association and the new development could be for something other than similar townhouse units. Commissioner Binder noted that the petitioner acknowledged that a realtor said there would be a potential financial impact.

Commissioner Murray asked whether there are any statistics contrasting property values for units closer to and farther from the common area. The petitioner replied that there has not been much turnover in the development. Commissioner Segovis inquired why the petitioner would want to vote on the issue. Attorney Burchfield stated that after hearing today's analysis it is clearer to the petitioner that he should not participate. He explained that the petitioner had wished to participate because these are important town issues that

impact the school system, fire department services and added that the town is always looking for revenue. Commissioner Kirby also noted that the petitioner serves as Council President at large.

Commissioner Murray commended the petitioner for seeking the opinion and providing clarification. Staff Attorney DeValut indicated she would add language to the opinion regarding the petitioner's representation that he spoke with a realtor regarding the financial impact. Commissioner Cheit added that it is relevant that the subject property is presently open space and the opinion should also include that information. Commissioner Weavill stated that the opinion should include the additional information regarding the potential financial impact and that the property is open space. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Joseph Burchfield, the North Providence Town Council President.

The next advisory opinion was that of Richard H. Aitchison, the License Administrator for the City of Providence. Staff Attorney DeVault advised that the petitioner requested that the matter be tabled until October 9th so that he may attend the meeting. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder, it was unanimously

VOTED: To table the advisory opinion until the October 9, 2007 meeting.

At approximately 10:15 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws §§ 42-46-5 (4), to wit:

a.) Motion to approve minutes of Executive Session held on September 11, 2007.

**b.) In re: Susan Vadenais,
Complaint No. 2007-7**

**c.) In re: Joseph S. Larisa, Jr.
Complaint No. 2007-6**

e.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 11:07 a.m. The next order of business was a motion to seal the

minutes of the Executive Session held on September 25, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To seal the minutes of the Executive Session held on September 25, 2007.

Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on September 11, 2007; 2) authorized a full investigation in the matter of In re: Susan Vadenais, Complaint No. 2007-7 and; 3) authorized a full investigation in the matter of In re: Joseph S. Larisa, Jr., Complaint No. 2007-6.

The next order of business was the Election of Officers. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, it was unanimously

VOTED: To have the current officers continue in their positions for one year or until replaced.

RECUSAL: George E. Weavill, Jr.

Commissioner Weavill noted that only Commissioners Binder and Cheit are serving unexpired terms.

The next order of business was the Director's Report. Executive Director Willever reported that there are eighteen complaints pending, the bulk of which are non-filing complaints recently initiated by Staff. He informed that there are ten advisory opinions pending and the Commission did not receive any formal APRA requests since the last meeting. He advised that the proposed FY 09 Budget provides the Commission with barely enough for what it needs to do. He reported that he and Investigator Steven Cross recently gave presentations at the annual COGEL conference.

The next order of business was New Business. Commissioner Binder inquired whether the Staff's resources are stretched too thin to resume working on the regulations. In response, Director Willever suggested that it might be more prudent to revisit the regulations in two months. Commissioner Segovis stated that it would not preclude the members from discussing their priorities. Chair Lynch agreed. Chair Lynch commented that the Commission Staff is frequently asked to make presentations for COGEL, which is reflective of the good work that they do.

At approximately 11:21 a.m., upon motion made by Commissioner Kirby and Commissioner Segovis, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary